

Employment and Training Administration, Labor

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agency pursuant to procedures set forth in §§ 658.414 and 658.422.

(d) Certain types of complaints, such as, but not limited to, complaints by MSFWs, and complaints alleging unlawful discrimination, shall, as set forth in this subpart, be handled by specified officials of the State agency or of ETA.

STATE AGENCY JS COMPLAINT SYSTEM

§ 658.410 Establishment of State agency JS complaint system.

(a) Each State agency shall establish and maintain a Job Service complaint system pursuant to this subpart.

(b) The State Administrator shall have overall responsibility for the operation of the State agency JS complaint system. At the local office level, the local office manager shall be responsible for the management of the JS complaint system.

(c) (1) State agencies shall ensure that centralized control procedures are established for the handling of complaints and files relating to the handling of complaints. The Manager or Administrator of the local or State office taking the complaint shall ensure that a central complaint log is maintained, listing all complaints received, and specifying for each complaint:

- (i) The name of the complainant,
- (ii) The name of the respondent (employer or State agency),
- (iii) The date the complaint is filed,
- (iv) Whether the complaint is by or on behalf of an MSFW,
- (v) Whether the complaint is JS-related,
- (vi) If the complaint is JS-related, whether it is employer-related or agency-related,
- (vii) If the complaint is non-JS-related, the information required by § 658.414(c), and
- (viii) The action taken, including for JS-related complaints, whether the complaint has been resolved.

(2) Within one month after the end of the calendar quarter during which a local office receives an MSFW complaint (JS or non-JS related), the local office manager shall transmit a copy of that portion of the log containing the information on the MSFW complaint(s) or a separate listing of the relevant information from the log for each MSFW

complaint to the State Administrator. Within two months after the end of each calendar quarter the State Administrator shall transmit copies of all local and State office complaint logs received for that quarter to the Regional Administrator.

(3) State agencies shall ensure that any action taken by the responsible official, including referral, on a JS-related or non-JS related complaint from an MSFW alleging a violation of employment related laws enforced by ESA or OSHA is fully documented in a file containing all relevant information, including a copy of the original complaint form, a copy of any JS reports, any related correspondence, a list of actions taken, and a record of related telephone calls.

(4) At the State office level, the State Administrator shall ensure that all JS-related complaints referred from local offices, and all correspondence relating thereto are logged with a notation of the nature of each item.

(d) State agencies shall ensure that information pertaining to the use of the JS complaint system is publicized. This shall include the prominent display of an ETA-approved JS complaint system poster in each local office, satellite or district office, and at each State agency operated day-haul facility.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 39468, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982]

§ 658.411 Filing and assignment of JS-related complaints.

(a) JS-related complaints may be filed in any office of the State job service agency.

(b) Assignment of complaints to local office personnel shall be as follows:

(1) All JS-related complaints filed with a local office, and alleging unlawful discrimination by race, color, religion, national origin, sex, age, or physical or mental status unrelated to job performance (handicap) shall be assigned to a local office Equal Opportunity (EO) representative if the local office has a trained and designated EO

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representative, or, if the local office does not have such a representative, shall be sent immediately to the State agency for logging and assignment to the EO representative or, where appropriate, handled in accordance with the procedures set forth at 29 CFR part 31. The EO representative shall refer complaints alleging discrimination by employers to the Equal Employment Opportunity Commission or other appropriate enforcement agency. Complaints retained by an EO representative shall be subject to the hearing and appeal rights as are normally provided in accordance with this subpart. The State agency complaint specialist shall follow-up with the EO representative or with other responsible enforcement agency monthly regarding MSFW complaints and quarterly regarding non-MSFW complaints, and shall inform the complainants of the status of the complaint periodically.

(2) All JS-related and non-JS related complaints other than those described in paragraph (b)(1) of this section shall be handled by the local office manager or assigned by the local office manager to a local office employee trained in JS complaint procedures.

(c) Assignment of complaints to State office personnel shall be as follows:

(1) The handling of all JS-related complaints received by the State office alleging unlawful discrimination by race, color, religion, national origin, sex, age, physical or mental status unrelated to job performance (handicap) status shall be assigned to a State EO representative and, where appropriate, handled in accordance with procedures set forth at 29 CFR part 31.

(2) The handling of all other JS-related complaints and all non-JS-related complaints received by the State office shall be assigned to a State agency official designated by the State Administrator, provided that the State agency official designated to handle MSFW complaints shall be the State MSFW Monitor Advocate.

§ 658.412 Complaint resolution.

(a) A JS-related complaint is resolved when:

(1) The complainant indicates satisfaction with the outcome, or

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(2) The complainant chooses not to elevate the complaint to the next level of review, or

(3) The complainant or the complainant's authorized representative fails to respond within 20 working days or in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate local or State office, or

(4) The complainant exhausts the final level of review, or

(5) A final determination has been made by the enforcement agency to which the complaint was referred.

§ 658.413 Initial handling of complaints by the State or local office.

(a) There shall be an appropriate official available during regular office hours to take complaints in each local office.

(b) Whenever an individual indicates an interest in making any complaint to a State agency office, the appropriate JS official shall offer to explain the operation of the JS complaint system. The appropriate JS official shall offer to take the complaint in writing if it is JS related, or if non-JS related, it alleges violations of employment related laws enforced by ESA or OSHA and is filed by or on behalf of an MSFW. The official shall require that the complainant put the complaint on the JS Complaint/Referral Form prescribed or approved by the ETA. The JS Complaint/Referral Form shall be used for all complaints taken by a State agency, including complaints about unlawful discrimination, except as provided in paragraph (c) of this section. The State agency official shall offer to assist the complainant in filling out the form and shall do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants shall be named on the JS Complaint/Referral Form. The complainant shall sign the completed form. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint shall be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed JS Complaint/Referral